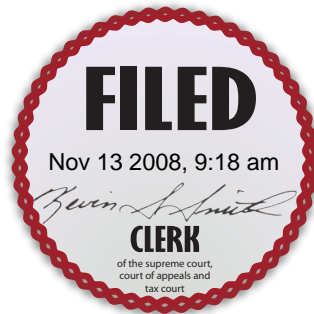


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

FREDERICK M. COOPER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 82A01-0806-CR-252

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D02-0205-FA-407

November 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Frederick M. Cooper pleaded guilty to multiple counts of child molesting and sexual misconduct with a minor. He appeals his thirty-year sentence raising the restated issue of whether his sentence is inappropriate in light of the nature of the offenses and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 6, 2002, the State charged Cooper with six counts of child molesting,¹ each as a Class A felony, four counts of sexual misconduct with a minor,² each as a Class B felony, and two counts of child molesting,³ each as a Class C felony. Cooper entered into a plea agreement with the State on January 14, 2003, in which he agreed to plead guilty to all twelve counts. Both parties agreed that Cooper's sentence would be open to argument with the executed time not to exceed thirty years.

On April 22, 2003, the trial court held a hearing, during which Cooper's testimony supplied the following factual basis. The victims in this case were Cooper's two nieces, A.C. and T.A. From 1999 through June 26, 2000, Cooper performed oral sex and sexual intercourse on A.C., who Cooper knew was under the age of fourteen. These two acts constituted Class A felony child molesting. Cooper continued to commit sexual acts on A.C. after she turned fourteen; at least four of these acts constituted Class B felony sexual misconduct with a minor. Cooper likewise committed sexual acts on T.A., a child under the

¹ See IC 35-42-4-3(a)(1).

² See IC 35-42-4-9(a)(1).

³ See IC 35-42-4-3(b).

age of fourteen. These acts included digital penetration, oral sex, and sexual intercourse. At least four of these acts constituted Class A felony child molesting, and two of these acts constituted Class C felony child molesting.

Following the plea hearing, the trial court accepted Cooper's plea of guilty to all twelve counts and sentenced him to thirty years executed for each of the Class A felonies, ten years executed for each of the Class B felonies, and four years executed for each of the Class C felonies, with the sentences to be served concurrently to each other. *Appellant's App.* at 271. Cooper now appeals his sentence.

DISCUSSION AND DECISION

Cooper contends that his thirty-year sentence was inappropriate. Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). We give deference to the trial judge's special expertise in making sentencing decisions. *Lemond v. State*, 878 N.E.2d 384, 394 (Ind. Ct. App. 2007), *trans. denied* (2008). The defendant bears the burden of demonstrating how his sentence is inappropriate. *Id.*

At the time Cooper committed his crimes, the presumptive sentence for a Class A felony was thirty years. IC 35-50-2-4 in pertinent part provided:

A person who commits a Class A felony shall be imprisoned for a fixed term of thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances

During the sentencing phase of the hearing, the trial court made the following statements:

I look at the nature and the circumstances of the crime, over years this has occurred, multiple victims, multiple sex acts, you were in a position of trust, you were their blood uncle, these girls are thirteen years old, [A.C.] is deaf, when I look at your character I don't see a lot of remorse in any of this other than the fact that it's had some impact on your life, even when I am looking in the interview, on page one, the therapist noted that while Mr. Cooper stated he knew he needed help, the interviewer[']s impression was that he was, this is a summary dated from April 23 of 2002, he was not very forthcoming in explaining his sexually inappropriate behavior and was primarily interested in looking good for the Courts. You didn't have, mitigating I see that you didn't have a criminal record other than violation of liquor law, however, multiple victimizing of children, I would of easily given you far more than thirty years. I would of done consecutive sentences on separate victims which means at a bare minimum you would of been looking at sixty years in my opinion.

Appellant's App. at 270-71.

On appeal, Cooper does not address the trial court's findings. Instead, merely quoting from statements made by his trial counsel during closing argument of the sentencing hearing, he argues, "the only appropriate sentence was the minimum sentence of twenty (20) years." *Appellant's Br.* at 16-17. We disagree. After hearing the factual basis for each of the twelve felony convictions, the trial court noted Cooper's lack of criminal history as a mitigating factor, but recognized as aggravating circumstances that he was likely to commit another crime, his crimes occurred over a lengthy period of time, and he committed multiple types of sex acts against two victims with whom he held a position of trust. *Appellant's App.* at 269-71. The trial court noted that, without the benefit of the sentencing cap, the court would have

imposed a sentence of sixty years. Cooper's sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

VAIDIK, J., and CRONE, J., concur.